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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) CC Docket No. 90-623
Carrier Use and Dissemination) CC Docket No. 92-256
of Customer Proprietary Network)
Information)

TO: The Commission

**REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company (SWBT), by its attorneys, respectfully files these Reply Comments in response to comments filed by certain parties concerning the Commission's March 10, 1994 Public Notice, FCC 94-63, on the captioned subject.

I. INTRODUCTION

The Public Notice called for comment on whether the Commission's current rules governing carrier use and dissemination of Customer Proprietary Network Information (CPNI) should be re-evaluated in light of recent announcements regarding potential carrier "alliances, acquisitions, and mergers with non-telephone company partners." Public Notice, pp. 2-3. The Commission expressly noted that its area of concern was that "[i]n this changing environment, access to CPNI among affiliated companies may raise additional privacy concerns.... Parties should comment specifically on the issue of residential and small business customers' CPNI-related privacy expectations." Id. (Emphasis added)

Despite the clearly narrow focus intended by the Commission, some commenting parties abused the Public Notice by raising a whole host of purported concerns having nothing whatsoever to do with customer privacy concerns. Instead, these

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parties continued their eight year-old, non-stop whine about the supposed competitive inequity of the Commission's CPNI rules, even though the Commission has painstakingly and thoroughly addressed every such issue on so many previous occasions that SWBT has actually lost count.

SWBT attempts herein to confine its remarks to the intended area of customer privacy concerns, but is irresistibly compelled to respond to several particularly ridiculous notions advanced by certain parties on the subject of competitive equity.

II. THE CONCERNS EXPRESSED IN THE PUBLIC NOTICE ARE UNFOUNDED.

As explained in SWBT's Comments, the "alliances, acquisitions and mergers" described in the Public Notice for the most part have since evaporated. Further, SWBT explained, even if such alliances come to fruition at some later point, any business would be committing commercial suicide to betray its customers' legitimate expectations of privacy regarding CPNI. Thus, this is an area that the Commission clearly does not need to try to "police" in any event.

In the final analysis, any business enterprise's use of customer information must be guided by a simple criterion: customer expectation. Regardless of changes in the structure of the industry, the actual or potential mergers or partnerships between companies, or any other changed circumstances, customers have legitimate expectations about how businesses with whom they have a relationship should use the information which has been furnished by the customer in the course of business transactions. For a business to violate customer expectations is to engage in the riskiest of all commercial behaviors. Therefore, the Commission

need not regulate the use of customer information as it relates to the privacy expectations of consumers.

Customers of telecommunications services have legitimate expectations regarding the use of information which is collected in the course of a communications transaction or in a business transaction. Generally, customers expect someone with whom they have a pre-established relationship to use information which has been freely given (either explicitly or implicitly). On the other hand, individuals have an expectation that information given in the course of a specific transaction will not be sold, transferred, or otherwise made available to unaffiliated entities to be used in unrelated ways. For example, consumers generally know that certain information will be in the public domain to allow financial institutions or retailers to reduce their risk by assessing the credit worthiness of potential borrowers. However, consumers are less willing to accept what they consider intrusions (such as from telemarketers or direct mail marketers) on the basis of information given in some unrelated transaction.

Consumer expectations will guide any and all commercial enterprises as to what extent they use and/or release information obtained from customer transactions. To the extent any entity violates the expectations of its customers, over time that entity risks losing the potential for longstanding commercial relationships with those customers and probably others as well. Therefore, regulation in this area is simply unnecessary.

III. THE COMMISSION HAS CORRECTLY BALANCED PRIVACY AND EFFICIENCY.

The issue of use of a customer's CPNI boils down to competing interests: customer concerns about the use and/or disclosure of information; competitive equity among service providers; and efficiencies lost or gained by the use of CPNI by a given firm. For purposes of this discussion, we will distinguish "privacy" concerns from "commercial" concerns, particularly since the Commission, in its Public Notice, sought input on the question of whether industry changes have altered the balance between these competing interests as related to privacy.

Privacy concerns regarding CPNI relate to consumer expectations about how an enterprise uses the information it collects in the course of doing business.¹ Generally, consumers expect businesses to use information in their possession to market other services or products, perform customer research or trials, and otherwise try to increase revenue, customer loyalty, or both. Consumers know that they must freely give certain information about themselves to commercial or other entities (such as not-for-profit organizations) if they desire a business relationship or some type of transaction to take place.

For instance, consumers who use a retail credit card are not surprised to receive sale brochures from the retailer, announcements of new services or stores, or routine catalog mailings of merchandise from shoes to soap to sofas to sweaters. However, those same consumers may object if the information

¹ Commentors in this proceeding have paid lip service to the issue of privacy, but have consistently and tellingly focused on competitive equity as the basis of their displeasure with the Commission's current CPNI rules.

collected by the retailer is provided to unaffiliated entities with whom the consumer has no existing relationship.

In the context of the evolution of the telecommunications industry, these expectations are essentially the same as described above. For example, an MCI customer would probably not find it strange or offensive to receive a mailing or telemarketing call from an MCI sales representative who might be trying to sell him/her a package of long distance services. Going a step further, that same customer would probably not object to receiving a notice from MCI announcing a special introductory offer of a new service. As a business enterprise, however, MCI must realize that the risk of customer ire increases with the possibility that the customers's CPNI has been disclosed to non-affiliated parties.

The evolution of the industry may create, for some period, a customer confusion factor which is not yet evident today. Service providers will be offering services in non-traditional markets and manners. At first, it may not be evident to consumers that companies which they considered to be providers of a particular service, such as cable TV, may add telephone service to their mix. It may appear to consumers that their providers of choice have shared CPNI with others when in fact they have not. Over time, this confusion, like the confusion created with the AT&T divestiture, will dissipate. In the interim, service providers must be especially sensitive to the expectations of their customers to avoid needless adverse customer reactions.

The "commercial" concerns regarding CPNI are created by the tension between competitive equity and promoting economic efficiency. Clearly, any firm which cannot freely use (for

legitimate purposes) information about its customers which it has in its possession is subject to inefficiency in the form of foregone business opportunity, increased costs, or both. Likewise, public benefits may be foregone if services are more costly than they would otherwise be, or if imposed inefficiencies result in fewer services reaching the market.

Specific to telecommunications services, the competing concern is that incumbent providers such as the Bell Operating Companies (BOCs) have access to customer information which new competitors cannot get from the BOC without the consent of the customer.² Some parties suggest that equity would be served if the incumbent providers were required to also obtain the customer's consent before using CPNI to market services.³ This suggestion ignores the enormous cost of obtaining consent from the number of customers involved, and the cost of maintaining that information. Perhaps most importantly, customers find it at best curious, and at worst ridiculous, that a business which clearly already has information freely given by the customer must ask permission to use it. Obtaining the customer's consent to use CPNI to market services in this situation simply does not make sense from the perspective of the customer or the provider.

² This argument does not consider that many of the "new" competitors are not new entities, but substantial service providers entering non-traditional markets. Nor does it account for service providers who themselves have a substantial customer base from which they are permitted to use the CPNI of their customers. Furthermore, a great amount of the information which would be valuable is in the public domain and can be obtained from many other sources.

³ ITAA, p. 4; CompuServe, p. 9; PUCT, p. 4.

The issue is simply this: should policy makers impose a huge cost on the macro economy by imposing inefficiencies on some telecommunications providers and their customers, for the purpose of bestowing a minuscule benefit upon other service providers who seek to enhance their own competitive position? The public interest, in its broadest sense, is ill-served by the imposition of costs and inefficiencies which are not outweighed by corresponding benefits. This is, in fact, the essence of the rationale behind the Commission's existing regulations governing the BOCs' and GTE's use of CPNI.

One of the primary concerns with the existing "above-20-line" rule has been and continues to be the distribution, authorization, and collection of the prior consent forms. Distribution of the forms is very costly and time consuming and currently is only made to SWBT's Major Accounts and Select Business Accounts segments. These two segments make up only about 50,000 SWBT accounts. Extending the CPNI prior authorization rule to the residence and small business markets would include approximately an additional 9.2 million customers. A comparable mailing of this magnitude would cost over \$1.5 million. Upon completion of this mailing, the forms would have to be sent to a central repository in each Market Area for sorting, recording and retention.

Another primary area of concern is the tremendous amount of customer confusion over the CPNI rules. Even with our most sophisticated customers in the Major Accounts and Select Business Accounts segments, there is a great deal of misunderstanding regarding CPNI among SWBT customers. If the prior authorization rule were extended to the rest of our customers, the impact of

trying to educate customers both on telephone contacts and through the mail would be monumental. Holding times on telephone contacts would rise dramatically, causing customers to be unable to gain access to order basic telephone services. Staffing to adjust the number of "network only" service representatives, especially in light of the anticipated increase in the holding times mentioned earlier, would be nearly impossible. This would probably result in structural separation by default. There are numerous SWBT employees currently performing duties closely related to CPNI. With the extension into residence and small business it is a certainty that this number would increase significantly. No parties to this proceeding have presented any new evidence to suggest that such enormous additional burdens and costs are justified.

A number of commentators called for "equal access" to CPNI.⁴ Given that the Commission's predicate issue in the instant proceeding is privacy, this call for increased access by unaffiliated service providers is out of order, at best. The reality is that customers' privacy expectations are consistent with the current CPNI rules, and those parties calling for expanded access to that information are perilously close to blatantly disregarding those legitimate customer expectations.

IV. OTHER POINTS RAISED BY CERTAIN PARTIES ARE TOTALLY UNFOUNDED.

TCA states that "users do not expect telephone companies to make use of CPNI to market unregulated services and products." (p. 2) TCA is making a deficient attempt to characterize customer

⁴ IIA, p. 3; Prodigy, p. 1; NATA, p. 2; Cox, p. 6.

expectations as inconsistent with existing CPNI rules. Customers, especially residence and small business customers, most often do not know the difference between regulated and unregulated communications services. Customers care about being able to obtain satisfaction of their needs from their suppliers; consequently, customers expect that suppliers of telecommunications services might try to sell them additional or new services. Customer education on new products, regulated or not, is beneficial to the expansion of new markets for all providers. And, in the final analysis, customers can always invoke the sacred principle -- "Just Say No."

ITAA argues that "the Commission should require the LECs to apprise the Commission of aggregate CPNI which they disclose to their own enhanced service operations, as well as any other aggregate CPNI that may be available." (p. 7) ITAA clearly wants the LECs to do its members' marketing for them. Commission rules already require BOCs to keep up-to-date lists of aggregate CPNI given to their enhanced service operations so that unaffiliated ESPs can easily request the same types of aggregation.

NATA and IDCMA want to include CPE in the "above 20 lines" CPNI prior authorization rule. (NATA, pp. 2-3, IDCMA, p. 4) CPE is a highly competitive market which negates the need for safeguards for independent CPE providers. Clearly, the BOCs have such an infinitesimal CPE market share that it is obvious they have no CPNI-related, nor any other type of competitive advantage.

Cox Enterprises proposes a "new model" for CPNI which would create categories of CPNI subject to different rules of disclosure. (Cox, p. 3) Such a model would be impossible to

administer, subject to constant disagreement about what information should be in which category (which Cox acknowledges would differ from customer to customer), and is unnecessary in any event.


Centex wants to expand CPNI rules to include basic services, and urges the Commission to make the CPNI rules mirror the Bill Name and Address (BNA) rules established for interexchange carriers. (Centex, p. 15) Centex is a reseller of Centrex service, and wants to prohibit telephone companies from using CPNI to sell basic services in competition with Centex-provided service. The Commission has no record basis for expanding the scope of CPNI regulation to include other than enhanced services and CPE. Further, the Commission lacks jurisdiction over the terms and conditions of resale of local exchange services.

V. CONCLUSION

No changed circumstances and no party's comments have demonstrated any need to change the Commission's current CPNI rules. Accordingly, they should remain as they are.

Respectfully submitted,

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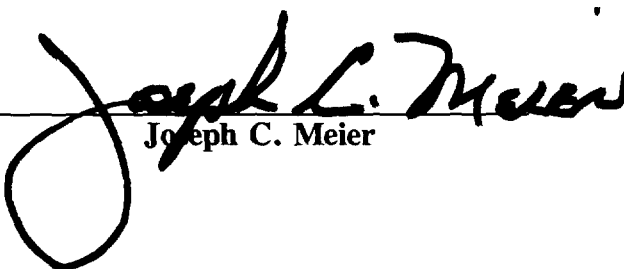
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May 19, 1994

CERTIFICATE OF SERVICE

I, Joseph Meier, hereby certify that the foregoing
"Reply Comments of Southwestern Bell Telephone Company", in
CC Docket No. 90-623 / 92-256 has been served this 19th day of
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